

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Nor-Am Cold Storage Inc.,

Petitioner-Appellant,

v.

Plymouth County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 10-75-0288
Parcel No. 12-20-326-013**

On September 1, 2011, the above-captioned appeal came on for a telephone hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Nor-Am Cold Storage Inc. (Nor-Am) was represented by Walter Grimms, Senior Tax Manager with LECG SMART Business Advisory and Consulting, LLC, Schaumburg, Illinois. The Plymouth County Board of Review designated County Attorney Darin Raymond as its legal representative. County Assessor Bob Heyderhoff represented the Board of Review at hearing. Nor-Am submitted one exhibit at hearing, and the Board of Review relied on the certified record. The Appeal Board having reviewed the entire record, heard the testimony and being fully advised, finds:

Findings of Fact

Nor-Am is the owner of a commercially classified, cold storage facility located at 1555 21st Street SW, LeMars, Iowa. According to the property-record card the improvements consist of several additions built between 1999 and 2001, having 210,544 square feet of building area. Nor-Am's legal representative, Walter Grimms, who is both an appraiser and a tax representative, allocates the square footage of building areas as follows: 190,344 square feet of freezer space, 2160 square feet of cooler

space, 11,147 square feet of dock area, 4802 square feet of office space, and 2091 square feet of shop area. The site is 11.78 acres.

Nor-Am protested to the Plymouth County Board of Review regarding the 2010 assessment. The January 1, 2010, total assessment of Nor-Am's property was \$10,319,490 allocated as follows: \$394,500 in land value and \$9,924,990 in improvement value. This was a change from the 2009 assessment. Nor-Am's claim was based on the following grounds: 1) that the assessment is not equitable as compared with the assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a) and; 2) that the property is assessed for more than the value authorized by law under section under section 441.37(1)(b). In its petition, Nor-Am sought relief to a total assessed value of \$8,422,000.

In its appeal to this Board, Nor-Am reasserted the same grounds, but asks for a total assessed value of \$8,517,800. We note it also checked the boxes on the appeal form a change in value. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment.

Nor-Am offered the following three properties, all located in LeMars, as equity comparables: 1609 18th Street SW (Clover Leaf), 1188 Lincoln Street SW (Dean Foods), and 1 Blue Bunny Drive (Wells Dairy).

Both the Wells Dairy and Deans Foods equity comparables are approximately 19,000 square foot light-industrial or light-manufacturing buildings compared to the subject's cold-storage facility of over 210,000 square feet. Because of the significant size difference, as well as different types of buildings, we do not find them to be similar properties for equity comparison.

Clover Leaf is a similar cold-storage facility; although it is roughly half the size of the subject property, it has many similar qualities. Grimms asserts the subject is inequitably assessed because it has a total assessment per square foot of \$45.00 compared to Clover Leaf which has a total assessment per square foot of \$49.01. Grimms notes the major difference is the amount of functional obsolescence applied to the comparable versus the subject property. Using this simple comparison, in a letter to the Board of Review dated June 7, 2010, Grimms asserts it demonstrates the "subject property has not been uniformly assessed with other like properties."

Assessor Bob Heyderhoff testified that Vanguard Appraisals provided the valuations for both Clover Leaf and the subject property. He was unable to identify the appraiser, and assumed it was the same appraiser for both properties. Heyderhoff was also unable to explain why Clover Leaf had more obsolescence applied to it compared to the subject property.

We agree that Grimms' simple analysis raises questions regarding the property's assessment and it would seem prudent for the assessor to investigate and provide an explanation for the differences in assessed value per square foot for seemingly very similar properties. However, there is not enough evidence to convince us that an assessing method was not uniformly applied.

Additionally, Nor-Am has only one equity comparable; and more than one equity comparable must be provided for a claim of inequity.

Grimms provided four properties which sold between March 2007 and April 2009; and three property listings for a market value analysis. The record is not clear how many of these properties are similar cold-storage facilities. Grimms attached listing sheets for all seven properties. Based upon these sheets it appears the properties have the following uses: Comparables 1 and 5 are used for manufacturing; Comparables 2, 4, and 6 are warehouses; Comparable 3 is used for food processing; and Comparable 7 has an industrial use. There is no indication how much, if any, cold storage space

exists in the properties Grimms compares to the subject. We note the subject property has over 91% of its building devoted to freezer and cooler space.

Grimms adjusts the properties in his appraisal report, but he uses a format for comparison that is unusual and difficult to understand. Grimms lumps several factors into a single adjustment for “building features.” On the grid he notes these factors are age, percentage of office space, and “construction.” There was no explanation in the report or at hearing what the “construction” factor represented. In his report, Grimms explains there are adjustments for “physical characteristics,” which we assume is the “building features” adjustment on the grid. There is no adjustment for “physical characteristics” on the analysis grid. He states in his report that physical differences “may include building size, quality of construction, architectural style, building materials, age, condition, functional utility, site size, attractiveness, amenities, and on-site environmental condition.” He does not separate out the individual adjustments or identify the individual differences between his comparable properties and the subject property. He offers no support for his adjustments other than they were “based on data in our files and the judgement of the appraisers.” We find the unexplained adjustments unconvincing.

We believe there is a difference between a warehouse facility, a manufacturing facility, and cold-storage facility. We do not rely on Grimms comparable properties, because we are unable to determine what the amount of their dedicated building area is to cold storage compared to the subject. Because of these concerns regarding comparability, as well as unexplained adjustments, we find the appraisal is unreliable.

Finally, Grimms provided a listing to this Board asserting it supports Nor-Am’s position the subject’s assessed-value-per-square-foot of \$49.01 is excessive. The listing is of a property located at 3430 Cypert Way, Ardmore, Oklahoma. According to the listing sheet it is a Class B Warehouse building built in 2000. It has a freezer-cooler distribution building of 59,477 square feet and an additional 3960 square feet of office space. It is on a 10-acre parcel. Grimms testified it is 100% cold

storage similar to the subject property. It is listed for \$2,500,000 or \$42.03 per square foot. Nor-Am did not make any direct comparison between this listing and the subject property adjusting for differences such as size or location, as such we give it limited consideration.

After reviewing all the evidence, we find Nor-Am has failed to present sufficient evidence in support of its claims.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). While Nor-Am offered a comparable property and asserts the assessing method was not uniformly applied, the evidence is lacking to support this claim.

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). Nor-Am offered a single property for equity comparison. The Iowa Supreme Court has interpreted “representative number of comparable properties” to be more than one property. *Maxwell v. Shriver*, 257 Iowa 575, 581, 133 N.W.2d 709, 712 (1965). This “statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board.” *Montgomery Ward Dev. Corp. by Ad Valorem Tax, Inc. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992). Furthermore, the word “shall” as used in the statute makes the listing of comparable properties mandatory as failing to do so would “directly frustrate the sole function of the requirement, which is to enable the board to make a preliminary determination on the matter of equitability of assessment.” *Id.* Additionally, Nor-Am provided only one property that was actually comparable for equity analysis. Nor-Am made no direct comparisons between the subject property and this property submitted for equity analysis. Nor did Nor-Am provide the market value of the equity comparable to complete a ratio analysis of market value to assessment value.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277

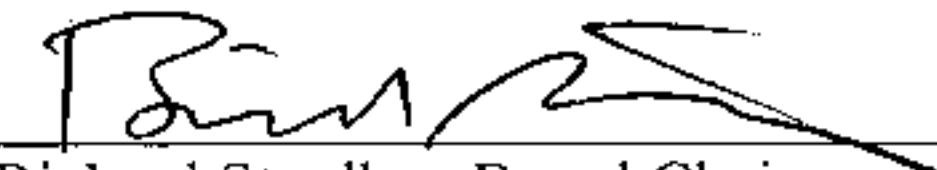
(Iowa 1995). Nor-Am offered an appraisal completed by Grimms. We find the Grimms appraisal had limited reliability; and therefore, we give no weight to this evidence.

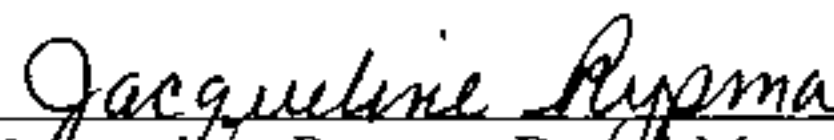
The evidence does not support the claims that the property's assessment is inequitable or that it is assessed for more than the value authorized by law. We, therefore, affirm the assessment of the Nor-Am Cold Storage Inc., property as determined by the Plymouth County Board of Review as of January 1, 2010.

THE APPEAL BOARD ORDERS the assessment of the Nor-Am property located at 1555 21st Street SW, LeMars, Iowa, of \$10,319,490 as of January 1, 2010, set by the Plymouth County Board of Review, is affirmed.

Dated this 6 day of October, 2011.


Karen Oberman, Board Member


Richard Stradley, Board Chair


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-6</u> , 2011	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature	